Supreme Court, U.S.
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No. 93-5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHNNY H. WATERS, ET AL.

Petitioners

versus

STATE OF ALABAMA

THE UNIVERSITY OF ALABAMA BIRMINGHAM MEDICAL CENTER, UNIVERSITY OF ALABAMA HOSPITALS, ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether Jeanne Carol Waters constitutional right to live and due process under the 5th and 14th Amendments to the U.S. Constitution were violated when a resident doctor, who had performed the same operation two times on patient/petitioner, and had her life support systems removed when he had no authorization from UAB Hospital or a court order after the patient/petitioner had been given drug Pavulon to induce unconsciousness?

II. Whether the civil rights [42 U.S.C. § 1983] were violated because of the constitutional rights of Jeanne Carol Waters were violated [5th and 14th Amendments to the U.S. Consitution and question of whether under 2-year or the 6-year statute of limitations because of trespass on the person as seen in the Alabama case [Beard v. Stevens, 372 F. 2d 685, (1967)] because Jeanne Carol Waters was assaulted and trespassed on her person by the

QUESTIONS PRESENTED (CONTINUED)

unauthorized pulling of her life support systems by resident doctors [doctors in training when she had been induced to be unconscious by a drug, Pavulon, causing her die [she lived approximately 2 hours after pulling life support system indicating she was not brain dead].

after she had been induced to be unconscious by a drug, Pavulon, causing her to die?

III. Whether a hospital can bury their mistakes and wrong doings by their agents, resident doctors [doctors in training] with legal technicalities that infringe upon the U.S. Constitutional rights of Jeanne Carol Waters by violating her civil rights when she had a right to live under the 5th and 14th Amendments to U.S. Constitution.

IV. Whether the instant case concerning the constitutional right to live is a first impression case and the Supreme Court of the United States has jurisdiction of the case and

QUESTIONS PRESENTED (CONTINUED)

can consider the merits of the case and rule as to the length of time this type of civil rights violation led to the premature and wrongful death of Jeanne Carol Waters, i.e. whether the 2-year statute or 6 year statute of limitations is applicable and when there is a life threatening civil rights violation whether this is a trespass on the person and comes under the 6-year statute of limitation or whether a procedural state law on statute of limitations can infringe on constitutional rights of the 5th and 14th amendments to the U.S. Constitution when the right to live and due process in the courts has been violated?

V. Whether the State of Alabama in failing to repsond to the state law on sovereign immunity exception of injury to the person being challenged should be considered as default and the instant case should be reversed and remanded because the State law

QUESTIONS PRESENTED (CONTINUED)

was challenged, and when a state law on sovereign immunity (in this case excception to sovereign) immunity because of trespass on person, impinges on the constitutional right to live under the 5th and 14th Amendments to U.S. Constitution then then the federal should prevail?

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Table of Contents	v
Citations of Authority	v
Opinions below	1
Jurisdiction	2
Statement of Case	4
Statement of the Facts	8
Reasons for Writ of Certiorari	11
Conclusion	17

CITATIONS OF AUTHORITY

	Page
Beard v. Stevens, 372 F. 2d 685 (1967)	16,17
Cochran v. Hasty, 378 So. 2d 1131 (Ala. Civ. App. 1979)	11
Doucet v. Middleton, 328 F. 2d 97 (5th Cir. 1964).....	14
Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989) ..	16

CITATIONS OF AUTHORITY (CONTINUED)

Keel and Keel v. Banach, [Citation unknown since ruling July 16, 1993 by Supreme Court of Alabama recognizes "Wrongful birth" .] 12

Owens v. Okure,

488 U.S. 235 (1988) 16,17

Wheeler v. City of Pleasant Grove,

833 F. 2d 267 (11th Cir., 1987). 14

Other

Rule 15.2, Rules of the Supreme Court 3

Constitutional

5th Amendment to U.S. Constitution. i-iv, 4,5,7, 8,12-14

14th Amendment to U.S. Constitution i-iv, 3,5,7, 8,12,13

Statutes

42 U.S.C. § 1983 ..... i,8,13,17

Code of Alabama, 1975, §6-2-34 ... 11,14,15

Code of Alabama, 1975 §6-2-38(1).. 16

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The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below that was attached to the original Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision of the U.S. Court of Appeals, Eleventh Circuit, and from the Supreme Court of Alabama, the highest court in Alabama who originally denied the appeal. Jurisdiction is invoked under 28 U.S.C. § 1254 as Writ.

The constitutional issues were restated in the Complaint in the federal court and challenged Alabama law on sovereign immunity as well as other constitutional issues were mentioned below that are stated in this Reply Brief... and original Writ of Certiorari.

Attorney, Mr. Norman in writing his Brief in opposition to the Writ of Certiorari has not timely filed his brief and any statements by him should be stricken from the record. Further, Mr. Norman has no standing to argue against the constitutional issues when Mr. Norman failed to file any cross-appeal against the constitutional issues in the instant case with the U.S. Court of Appeals, 11th Circuit.

The instant case was docketed June 8, 1993, and the date in the brief of Mr. Norman is July 23, 1993, and is late according to Rule 15.2, Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The original case was timely filed on Jan. 2, 1991, when the Complaint was filed with Exhibits (Vol. I, p. 1-25).

In fact, Mr. Norman failed to defend the Respondents Hipp and Vives-Austin, who were resident doctors [doctors in training at UAB Hospital, Birmingham] in the state court.

The Counsel, Haydn M. Treschsel for UAB Hospitals in Birmingham et al. has waived any right to file a response to Petitioner's Petition for Writ of Certiorari in a letter dated July 20, 1993; the true defendants responsible are the UAB Hospital et al, because the direct trespass on the person which caused the death of Jeanne Carol

Waters was due to UAB resident doctor, Hipp who made the following statement in the medical records [which are in the record below] which stated,

4/2/89 0920 [time]

"D/C all meds, all drips, all labs. IVR at 50 cc /hr, VO Dr. Vives-Austin / T Taylor, RN" [D/C = discontinue].

[Signature] "Hipp"

i.e. Hipp [resident doctor in training] without authorization from staff doctor at UAB, and without proof of brain dead, and without court order after he had performed the same operation two times, did pull the life support systems from Jeanne Carol Waters who had the constitutional right to live under the 5th and 14th amendments [medical records were also filed in the federal court which substantiate all the facts presented in the original Petition for Certiorari and the facts are not "delusional"as falsely stated by Mr. Norman in his Opposition Brief on p. i.

Mr. Norman made further false statements concerning "the recitation of facts presented by pettioners is inaccurate and unacceptable... when facts are clearly stated in the records, particularly the medical records that filed in the court.

The original case was filed on January 2, 1991, and was timely filed in CV 91-0014. After the state court had ruled against Jeanne Carol Waters because of alleged sovereign immunity which should have been under the exception concerning personal injury, the federal case was filed on January 14, 1992, as a civil rights action which in the instant case is involved in trespass to the person which should be under the six-year statute of limitations. See Beard v. Stevens, 372 F. 2d 685 (5th Cir. 1967). The 1987 was a typographical error and has been corrected, and was not pointed out as falsely stated by Mr. Norman at the oral argument. The Supreme Court of the United States should consider the "right to live" of Jeanne Carol Waters

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who had no due process which was a violation of her 5th Amendment constitutional rights under the U.S. Constitution because Hipp [resident doctor] had no court order to remove the life support systems of Jeanne Carol Waters which he did and this unauthorized removal of the life support systems was the direct and proximate cause of her death. The federal law in the instant case should be reviewed again by this Honorable Court to determine if trespass to the person [unauthorized removal of life support systems causing death] comes under the two-year statutes of limitations or six-year statutes of limitations for civil rights actions. However, there is no doubt about it that Jeanne Carol Waters 5th and 14th amendments to the U.S. Constitution were violated when her life support systems were removed by a doctor in training. Also it is to be noted that the sovereign immunity law in the state of Alabama was also challenged in this instant case, but the state of Alabama did not respond.

The State of Alabama failed to defend concerning sovereign immunity in the instant case, and did not present oral argument below.

The Petitioner incorporates all the Statement of the Facts and the Statement of the Case from the original Petition for Writ for Certiorari. In fact, the entire Petition for Writ of Certiorari is incorporated into this Reply Brief...

STATEMENT OF THE FACTS

The Petitioner, Jeanne Carol Waters, had a right to live under the 5th and 14th Amendments to the U.S. Constitution, and when the resident doctors, Dr. Hipp and Dr. Austin-Vives pull the life support systems at UAB Hospital in Birmingham, without any authorization from the hospital or court order, the civil rights of Jeanne Carol Waters was violated under the 42 U.S.C. § 1983, especially since Jeanne Carol Waters had been induced to be unconsicious with the drug Pavulon.

Brief in Opposition to the Petition for Writ of Certiorari, p. i, since the allegations on malpractice and trespass to the person are not "mere delusions", and Constitutional issues were raised as will be seen by the briefs from the U.S. Court of Appeals, 11th Circuit, by the Appellant. THE THRESHOLD issue in this Honorable court is to determine if there is a two-year or six-year statute of limitations concerning trespass to the person in the state of Alabama, and whether there would be a 6-year statute of limitations concerning trespass to the person in civil rights cases in the state of Alabama because a person has a "right to live" especially when they can not make their own choice when Jeanne Carol Waters was unconscious because of being induced to be unconscious by the drug Pavulon.

Since Hipp [resident doctor] was willfully taking the life of Jeanne Carol Waters, it appears as stated below this is actually Murder I, and there is no statutes of

limitations for Wrongful death when there was no court order or authorization from the hospital or any real doctor such as a doctor on UAB Hospital staff, the Writ of Certiorari should be granted.

Mr. Norman only represented two defendants, and Mr. Trechsel represented the UAB Hospital defendants responsible and liable for the wrongful pulling of life support systems since Hipp and Vives-Austin [resident doctors in training] had failed to notify the staff doctors at UAB Hospital before these resident doctors, especially Hipp as he signed on p. 5 of this Reply Brief to "D/C [discontinue] all meds, all drips..." which was the direct and proximate cause of the wrongful death of Jeanne Carol Waters.

REASONS FOR WRIT OF CERTIORARI

The United States Constitutional issues were written in the briefs by the Appellant at the U.S. Court of Appeals, 11th Circuit. According to Code of Alabama, §6-2-34, trespass to person or liberty is listed under Six years of statutes of limitations. By Hipp [resident doctor] removing the life support systems of Jeanne Carol Waters after she had been induced to be unconscious by the drug Pavulon was a direct trespass on her person that was the direct cause of her wrongful death, and in other words is MURDER I, which has no statute of limitations. See definition of "direct force" in Cochran v. Hasty, 378 So. 2d 1131 (Ala. Civ. App. 1979). Also see the 1987 Code of Alabama, 1987 Supplement, which states on p. 20,

"Federal civil rights claim. The essential nature of a federal civil rights claim under

42 U.S.C.A. § 1983 fits the description of trespass under Alabama law; therefore, federal courts in Alabama will apply the six-year limitations..." The point is if there is any conflict of law since as described in the original Petition for Writ of Certiorari, then the Honorable Supreme Court of the United States should re-consider law concerning "direct force" causing death, when a person has a "right to live" under the 5th and 14th Amendments to the U.S. Constitution.

Recently since the original Petition for Writ of Certiorari was written and docketed June 8, 1993, the Supreme Court of Alabama has now ruled in the case Keel and Keel v. Banach, [Citations unknown since ruled July 16, 1993] that state law recognizes "Wrongful Birth" claims. It is quite clear that repsondent Hipp [resident doctor] did commit a trespass on the person of Jeanne Carol Waters and did cause the "Wrongful Death" since she did not die immediately

after the life support systems were pulled indicating that she was not brain dead at the time Respondent Hipp removed her life systems without authorization from the hospital and without authorization from any hospital staff doctors, and clearly Respondent Hipp was acting below standards of any doctor or hospital and did malpractice Jeanne Carol Waters before she died on or about 2 hours after the life support systems were removed which is substantiated in the medical records which are in the records below. Mr. Norman is clearly making false statements in contra-distinction to the medical records on p. i, Brief in Opposition to Petition for Certiorari.

Because of the taking of a life without authorization as Hipp [resident doctor] did by signing to have the life support systems removed is a violation of the 5th amendment rights to due process since he had no court order to discontinue the life support systems, which triggered action under 42 U.S.C. §1983. See

Wheeler v. City of Pleasant Grove, 833 F. 2d 267 (11th Cir., 1987), and the taking of the property right to life should be more important that just taking property rights.

Willful trespass on the person has a 6-year statutes of limitations, Code of Alabama, 1975, § 6-2-34, and trespass on the person in this instant case is the violation of Jeanne Carol Waters' constitutional right to live under the 5th and 14th Amendments to the U.S. Constitution Murder I has no statute of limitations, and the instant case should be reversed and remanded for trial by jury.

See Code of Alabama, 1975, § 6-2-34 on p. 42 under II. Trespass to person, states,

"**Willful or wanton injury deemed trespass** - An action against a defendent for a willful or wanton injury committed by the defendant himself is in trespass and is covered by the six-year statute of limitations. Doucet v. Middleton, 328 F. 2d 97 (5th Cir. 1964)."

The Petitioner incorporates all statements in the original "Writ of Certiorari" and the instant Reply Brief... is primarily repsonding to the attorney Mr. Norman's short brief which was not timely filed and should be stricken from the record.

Mr. Norman made further false statements concerning "the recitation of facts presented by pettioners is inaccurate and unacceptable... when facts are clearly stated in the records, particularly the medical records, filed in the court.

The Honorable Court should consider the "right to live" of Jeanne Carol Waters who had no due process which was a violation of her 5th Amendment constitutional rights under the U.S. Constitution because Hipp [resident doctor] had no court order to remove the life support systems of Jeanne Carol Waters which he did and this unauthorized removal of the life support systems was the direct and proximate cause of her death. The federal law in the instant case should be reviewed again

by this Honorable Court to determine if trespass to the person [unatuhorized removal of life support systems causing death] comes under the two-year statutes of limitations or six-year statutes of limitations for civil rights actions. However, there is no doubt about it that Jeanne Carol Waters 5th and 14th amendments to the U.S. Constitution were violated when her life support systems were removed by a doctor in training.

See Beard v. Stevens, 372 F. 2d 685 (1967), which states, "Alabama six-year statute applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations..."

This law in Beard case supra is in direct conflict with Owens v. Okure, 488 U.S. 235 (1988); Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989); and Code of Alabama § 6-2-38(1) (Supp. 1992), 2-year statute of limitations where state law infringes upon the constitutional rights of Jeanne Carol

Waters, right to live and due process under the 5th and 14th Amendments to the U.S. Constitution which triggers in the 42 U.S.C. § 1983 civil rights claim.

The Petitioner is respectively asking this Honorable court to review the Owens v.Okure supra case with the Beard v. Stevens case and determine if the trespass on the person applies in the instant case.

CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

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July 28, 1993

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above was went to Hon. Jimmy Evans, Attorney General, State of Alabama, Montgomery, Alabama 36101, Mr. Robert D. Norman, Norman, Fitzpatrick et al, 1800 City Federal Building, Birmigham, Ala. 35203, and Mr. H.M. Trechsel, Office of Counsel, University of Alabama System, UAB Station, MJH, 112, Birmingham, Alabama 35294-2010 this 28 day of July 1993.

Julia Aram